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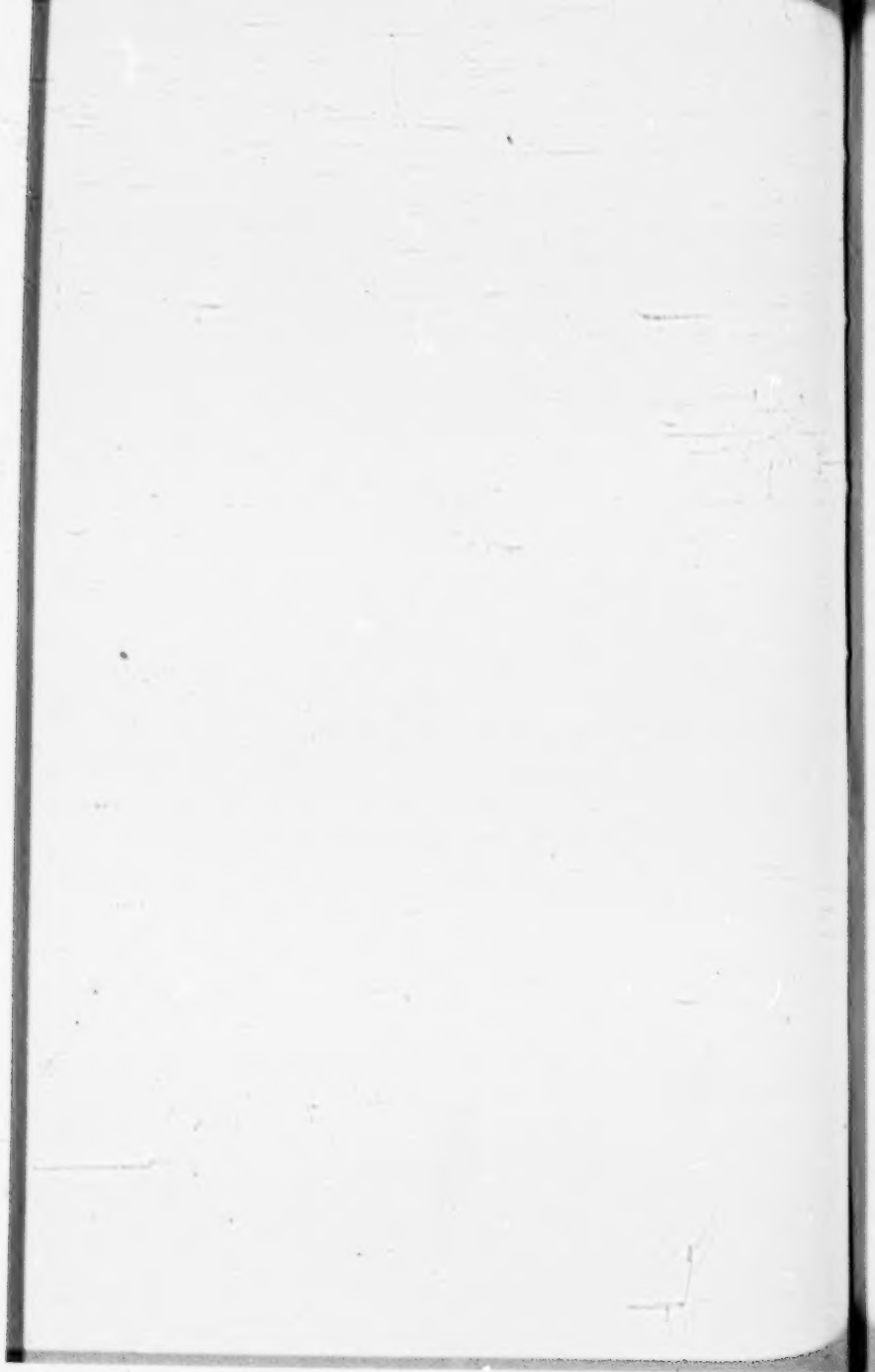
JONES & LAUGHLIN STEEL CORPORATION,
Petitioner,

v.

NATIONAL LABOR RELATIONS BOARD.

**PETITION FOR THE ALLOWANCE OF A WRIT OF
CERTIORARI, TO REVIEW A DECREE OF THE
UNITED STATES CIRCUIT COURT OF APPEALS
FOR THE FIFTH CIRCUIT, AND BRIEF IN SUPPORT
THEREOF.**

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**PETITION FOR THE ALLOWANCE OF A WRIT OF
CERTIORARI, TO REVIEW A DECREE OF THE
UNITED STATES CIRCUIT COURT OF APPEALS
FOR THE FIFTH CIRCUIT.**

*To the Honorable, the Chief Justice and
Associate Justices of the Supreme Court
of the United States:*

JONES & LAUGHLIN STEEL CORPORATION, the petitioner above named, respectfully presents its petition for the allowance by your honorable Court of a Writ of Certiorari to review a decree of the United States Circuit Court of Appeals for the Fifth Circuit (R. 168),¹

¹The transcript of record presented with this petition consists of two parts: "Volume I—Transcript of Record," which contains the pleadings, orders and decisions entered before the Board and in the Court below; and "Appendix to Petitioner's Brief," prepared in ac-

entered on March 16, 1945, by which that Court refused to set aside, but instead affirmed and enforced, a final Order (R. 90-91) which had theretofore been made against your petitioner by the respondent National Labor Relations Board.

Statement of the Matter Involved.

In this case, the Circuit Court of Appeals was called upon to review a final Order made against petitioner by the National Labor Relations Board, in what had commenced as an election and certification case, conducted by the Board under Section 9 (c) of the National Labor Relations Act, and ended as an unfair labor practice case prosecuted by the Board under Section 8 (5)—the refusal to bargain Section—of the same Act.

Petitioner, a steel manufacturer, owns a fleet of ten large river towboats, all registered steam vessels of the United States. They are operated in the pursuit of petitioner's business on the Mississippi, Ohio and Monongahela rivers, principally in the area surrounding Pittsburgh, from which petitioner obtains the materials used in steel manufacture, and in the carriage of finished products between that city and New Orleans (R. 1-2; 12). They are manned by crews made up of licensed masters and subordinate deck officers, licensed and un-

cordance with the Rules of the United States Circuit Court of Appeals for the Fifth Circuit, which contains the relevant testimony taken before the Board and the evidentiary exhibits. In this petition and brief, references to "Volume I—Transcript of Record," will be designated "(R.)"; and references to the "Appendix" will be designated "(App.)".

licensed marine engineers, and unlicensed seamen (37 N.L.R.B. 366; 38 N.L.R.B. 352).

Prior to the year 1941, none of these maritime employees was represented by any labor union (R. 97). During the summer of that year, three labor unions made their applications, almost simultaneously, to the respondent National Labor Relations Board, under Section 9 (c) of the Act, for certifications as exclusive representatives of the three principal classes of men employed in petitioner's crews (37 N.L.R.B. 366).

(Petitioner raised no question concerning the legal propriety of the claims of two of the three unions: of the National Maritime Union, which sought to represent the unlicensed seamen, and of the Marine Engineers Beneficial Association, which sought to represent the licensed marine engineers; and, when these two unions were chosen by majorities of these two classes of employees, and certified by the respondent Board (38 N.L.R.B. 352), petitioner recognized them fully and has since made written agreements with them (App. 113 a-151 a).

Thus, the petitioner's present case concerns, directly, only the third union, the National Organization Masters, Mates and Pilots of America.² In a petition filed with the Board August 25, 1941, this union sought to be certified as exclusive representative of all of the remaining members of petitioner's crews; i.e., of all the licensed pilots, mates and masters of the steamboats (37 N.L.R.B. 366). Its legal competency to be certified

²This union is sometimes hereinafter referred to as "M. M. & P."—a common nickname which appears often in the transcript.

as exclusive representative of the mates and the pilots was not disputed by petitioner, before the Board or in the Court below. Petitioner has, however, maintained throughout the proceedings that, under the Act, it cannot properly be required by the Board or by the union to permit the inclusion of the masters of its vessels within the scope of the union's jurisdiction or of the union's collective bargains. The union, on the other hand, has been unwilling to bargain for the mates and pilots only (App. 64 a); and it is this disagreement over the legal status of the masters—in which the Board has invariably supported the union's position—which has given rise to the legal controversy intended to be presented here.

The following is intended simply as a chronological description of the progress of the case until now.

In the original elections conducted by the Board on the three petitions of 1941, the M. M. & P. (unlike the other two unions) failed to qualify for certification (38 N.L.R.B. 352). Thereafter, on January 2, 1943, it filed a second petition for an election (R. 17). After a hearing held on five days' notice to petitioner, at which petitioner appeared and opposed the union's request, the Board ordered (R. 34) and held a second election, at which a majority of those who voted signified their desire to be represented by the union, for the purposes of the Act³ (R. 35-36).

³It seems fair and it may be relevant to observe that, because there were only ten licensed masters eligible to vote, as against a total of thirty-three eligible mates and pilots, the results (R. 36) of the election leave open the possibility that no licensed master employed by petitioner has desired to be represented by the union.

On March 30, 1943, a few days after the election, the Board certified the union as exclusive representative of all of the licensed officers: the mates and pilots and the masters also (R. 37-38).

Thereafter, petitioner filed with the Board two applications in which it sought an order setting aside this certification (R. 39; 42). These were denied by the Board in orders made, respectively, on July 13, 1943 (R. 41) and on August 11, 1943 (R. 44).

In the meantime, the union had demanded that petitioner bargain with it as exclusive representative of all the licensed officers, in conformity with the Board's certification. Petitioner had expressed its willingness to make an agreement with the union as representative of the mates and the pilots—omitting the masters, but this offer had been rejected, even as a stop-gap pending the outcome of further litigation of the status of the masters (App. 64 a; 111 a); and on September 2, 1943, the union filed with the Board a written charge which contended that petitioner, by refusing to bargain with it, had committed an unfair labor practice under Sections 8 (1) and 8 (5) of the Act (R. 46-47).

On September 4, 1943, the Board issued a complaint against petitioner, based on this charge (R. 48-52). Petitioner filed its written answer (R. 54-57); and on September 20, 1943, the Board held a hearing, before a Trial Examiner, on the issues raised by these pleadings (App. 42 a-151 a). In the course of the hearing, petitioner renewed its contention that certification of the union as representative of the licensed masters had been legally erroneous (App. 67 a, etc.).

On September 30, 1943, the Trial Examiner filed an "Intermediate Report," by which he recommended that petitioner's contentions be rejected and that petitioner's refusal to bargain be held an unfair labor practice (R. 58-70). Petitioner filed exceptions to the Intermediate Report, in which it embodied a Petition for Leave to Adduce Additional Evidence (R. 72-79). On November 16, 1943, the matter was argued before the Board (R. 82).

On January 19, 1944, the Board handed down its decision of the matter (R. 83-90), together with its final Order in the case—an Order by which it commanded petitioner to recognize the union as exclusive representative, under the Act, of all of the licensed officers, including the masters (R. 90-91).

On April 5, 1944, petitioner presented its Petition for Review of this Order of the Board, in the United States Circuit Court of Appeals for the Fifth Circuit (R. 1-10). On May 15, 1944, the Board filed an answer to the Petition for Review, in which it embodied a cross-petition for enforcement of its Order (R. 12-16).

On November 9, 1944, petitioner filed in the Circuit Court a Petition for Leave to Adduce Additional Evidence, showing, *inter alia*, that (as it had discovered only since the filing of the Petition for Review) the three unions mentioned above—the Locals of the National Maritime Union, the Marine Engineers Beneficial Association and the M. M. & P.—with which it had been required by the Board to negotiate and bargain, were dominated by a unified group of three officers, and that the three Locals had amalgamated their operations and programs so completely as to make them, not three independent unions, but instead a single union (R. 96;

101-102). On November 24, 1944, the Board filed an answer to this petition, which contained no denial of the facts averred by the petitioner, but which suggested that these facts had been considered immaterial by the Board in its decision of the case (R. 105-108).

On January 8, 1945, the Circuit Court heard oral arguments of the case, considering *inter alia* the questions raised by the Petition for Leave to Adduce Additional Evidence, and the Board's answer. On January 18, 1945, the Court handed down an opinion by which it determined that the Board's Order should be enforced (R. 109-113). On March 12, 1945, the Court made an order denying a petition for rehearing which had been filed by petitioner (R. 114-167; 168); and on March 16, 1945, it entered its Final Decree—the Decree sought to be reviewed here (R. 168-170). This Decree will, if it becomes effective, adopt and enforce the Board's final Order, and so require petitioner to acquiesce in the inclusion of the licensed masters in the scope of the agreements made and to be made by the unions as representatives of the other, subordinate marine employees.

Jurisdiction of This Court.

1. Under Section 10 (e) of the National Labor Relations Act (29 U.S.C. 160 (e)), this Court has jurisdiction, if an application be made within three months, to review the decision of the Circuit Court of Appeals upon Writ of Certiorari, in the manner provided in Section 240 of the Judicial Code, as amended by the Act of February 13, 1925 (28 U.S.C. 347).

2. The Final Decree of the Circuit Court of Appeals was entered after it had denied petitioner's Petition for Rehearing, on March 16, 1945 (R. 168-170).

Questions Presented.

1. Is the power granted the National Labor Relations Board, by Section 9 (b) of the National Labor Relations Act, to determine whether any particular class of employees shall or shall not be included in an "appropriate unit" for the purposes of collective bargaining, an unlimited power or a power limited by rules of law?

2. If the Board's power is limited, do the rules of law which limit it require the Board, in its establishment of "appropriate units," to preserve traditional distinctions between management and labor, by excluding from "units" dominated by employees who have traditionally been represented by unions, executive employees who have not, traditionally, been so represented?

3. If the Board's power is limited, do the rules of law which limit it require that the Board shall exclude from an "appropriate unit," dominated by their subordinates, executive employees whose independence of the influence of the subordinates, or of the unions which represent them, is necessary or desirable to the efficiency of management and to the discharge of the executives' legal duties?

4. If the Board's power is limited by such rules of law, may the Board lawfully demand the inclusion, in an "appropriate unit" composed of their subordinate licensed officers and dominated by the seamen they command, of the licensed masters of a fleet of steam vessels?

Reasons Relied upon for the Issuance of the Writ.

As petitioner proposes to show more fully in the annexed brief supporting this petition, it is believed and contended that the Writ of Certiorari should issue because:

1. The case presents an important question of federal law which has not been, but should be, settled by this Court;

2. The decision of this question of federal law by the Circuit Court of Appeals in this case is in conflict with decisions of the same matter by the Circuit Courts of Appeals for the Third, Sixth and Seventh Circuits; and

3. The decision of the question of federal law by the Circuit Court of Appeals in this case is erroneous.

WHEREFORE, your petitioner respectfully prays that your honorable Court issue its Writ of Certiorari to the said United States Circuit Court of Appeals for the Fifth Circuit, that it review the decision aforesaid in the manner provided by law, and that thereupon said decision shall be reversed.

And your petitioner will ever pray, etc.

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